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**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN BROWN,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0608-CR-467

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Commissioner
Cause No. 49G14-0601-CM-16053

April 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Steven Brown appeals his conviction for resisting law enforcement, a Class A misdemeanor. We affirm.

Issue

Brown raises one issue for our review, which is whether he can be convicted of resisting law enforcement by fleeing if the police had no reasonable suspicion to effectuate a stop.

Facts

The facts most favorable to Brown's conviction reveal that on January 30, 2006, at approximately 1:00 a.m., Indianapolis Police Officer Charles Tice observed Brown and another man leaving a church parking lot on foot. Officer Tice, who was in full police uniform, pulled his marked police car up alongside the men, turned on his spotlight, and exited his vehicle. Brown immediately turned and ran away. Officer Tice pursued Brown and ordered him to stop. When Officer Tice caught up to Brown, he placed him under arrest.

The State charged Brown with two counts of resisting law enforcement and one count of possession of marijuana. The trial court found Brown guilty of one count of resisting law enforcement and sentenced him to thirty days executed. Brown appeals his conviction.

Analysis

Brown contends that his issue on appeal is quite narrow and has not been specifically addressed before. He argues that the issue before us is "whether a citizen has

the right to run away from a police officer who had no legal authority to detain the citizen in the first place.” Appellant’s Br. p. 5. We conclude that the law in this regard is well-settled and that, “In Indiana, an individual may not flee from a police officer who has ordered the person to stop, regardless of the apparent or ultimate lawfulness of the officer’s order.” Dandridge v. State, 810 N.E.2d 746, 749 (Ind. Ct. App. 2004), trans. denied.¹

Indiana Code Section 35-44-3-3(a) provides that a person who “flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself or herself and ordered the person to stop,” commits the crime of resisting law enforcement. This court, on several occasions, has noted that the resisting law enforcement statute does not condition the offense on a lawful order. Alspach v. State, 755 N.E.2d 209, 211 (Ind. Ct. App. 2001), trans. denied. Evidence of flight following an officer’s order to stop is admissible in a prosecution for resisting law enforcement regardless of the lawfulness of that order. Corbin v. State, 568 N.E.2d 1064, 1065 (Ind. Ct. App. 1991). We see no reason why this rule should not apply in Brown’s case.

In support of his argument, however, Brown directs us to our opinion in Bovie v. State, 760 N.E.2d 1195 (Ind. Ct. App. 2002). In that case, we stated, “before an individual may actually resist law enforcement by fleeing, the individual must have a duty to stop.” Id. at 1197. We believe Brown’s reliance on Bovie is misplaced. The

¹ Because we conclude that the lawfulness of an officer’s order is immaterial to whether a defendant resisted arrest, we need not determine whether Officer Tice had reasonable suspicion to stop Brown.

facts of that case are readily distinguishable from those before us now. In Bovie, an undercover officer observed Bovie and another man leaving a residence that the officer had under surveillance. The officer followed the men and further observed that Bovie's vehicle had a headlight out. The officer then requested backup from a uniformed officer in a marked vehicle who could initiate a traffic stop. In the meantime, Bovie pulled into the parking lot of a gas station, and the undercover officer approached him. As the officer approached, Bovie fled in his vehicle and was subsequently arrested.

Even absent any consideration of the legality of the citizen-officer contact in Bovie's or Brown's cases, the facts of these cases are simply too different to fairly compare. Unlike in Bovie, a uniformed officer driving a marked vehicle ordered Brown to stop. These circumstances are apples and oranges; Brown is incorrect to rely on Bovie.

Conclusion

Regardless of the lawfulness of a police officer's order to stop, an individual may not flee from an officer who has issued such an order. Brown was properly convicted of resisting law enforcement. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.